Filed 1/7/19 In re D.K. CA2/6

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re D.K., a Person Coming Under the Juvenile Court Law.	2d Juv. No. B276463 (Super. Ct. No. KJ38982) (Los Angeles County)
THE PEOPLE, Plaintiff and Respondent, v. D.K., Defendant and Appellant.	

D.K., now 18 years old, appeals from a disposition order providing that he remain a ward of the juvenile court (Welf. & Inst. Code, § 602) and that he be placed on probation in the home of his guardian.[1] The order followed appellant's admission that

[1] Unless otherwise stated, all statutory references are to the Welfare and Institutions Code.

he had committed first degree residential burglary. (Pen. Code, §§ 459, 460, subd. (a).) Appellant argues: (1) substantial evidence establishes his mental incompetency, (2) he was erroneously presumed to be competent, and (3) the juvenile court erroneously refused to conduct a second competency hearing after he had been found competent at an earlier hearing. We affirm.

Procedural Background[2]

The juvenile wardship petition was filed in San Bernardino County in October 2015. That same month, appellant's counsel declared a doubt as to appellant's mental competency. The juvenile court suspended the wardship proceedings. It appointed Drs. Elsie Cheng and Marjorie Graham-Howard to prepare psychological evaluations of appellant. Both found appellant to be competent.

At a hearing conducted in November 2015, appellant's counsel did not contest the issue of competency. The San Bernardino County Juvenile Court found appellant "competent to stand trial." It reinstated the wardship proceedings.

In December 2015, when appellant was 15 years old, he admitted the burglary charge. The case was subsequently transferred to Los Angeles County because appellant resided there with his guardian.

In March 2016 appellant's new privately-retained counsel declared a doubt as to appellant's competency. The following month, appellant moved to withdraw his admission to the burglary charge on the ground "that he was likely incompetent when he made the admission." Appellant requested "that the court stop the proceedings [and] order a competency evaluation."

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[2] We omit a summary of the facts underlying the burglary charge because they are not relevant to the issues on appeal.

The Los Angeles County Juvenile Court denied appellant's motion to withdraw his admission. It refused to order a new competency evaluation or conduct another competency hearing because appellant had not shown "a substantial change of circumstances or [presented] new evidence casting a serious doubt on the validity of the prior finding of . . . competence."

Claim that Substantial Evidence Establishes Appellant's Incompetency

Appellant claims: "The San Bernardino Court erred when it found [him] competent to stand trial because substantial evidence established his incompetence." (Capitalization omitted.) The People correctly observe: "[A]ppellant has it backwards: the question on appeal is not whether substantial evidence supports appellant's claim below. Instead, the relevant question is whether the trial court's determination [of his competency] is supported by substantial evidence." The California Supreme Court has stated: "[A]n appellate court applies a deferential standard when reviewing a claim that the record does not support the juvenile court's determination in a competency proceeding." (*In re R.V.* (2015) 61 Cal.4th 181, 200.) "[L]ike a challenge to the sufficiency of the evidence supporting the verdict in an adult competency proceeding, a claim of insufficient evidence to support a juvenile court's determination in a competency proceeding is reviewed deferentially under the substantial evidence test." (*Id.* at pp. 185-186.)

Appellant's claim, therefore, should be that the evidence is insufficient to support the San Bernardino court's finding that he was competent to stand trial. Appellant forfeited this claim for two reasons. First, the record does not include the psychological evaluations prepared by Drs. Cheng and Graham-Howard. The

court's finding of competency was based on these evaluations. Thus, the record is inadequate for meaningful appellate review. "The party seeking to challenge an order on appeal has the burden to provide an adequate record to assess error. [Citation.] Where the party fails to furnish an adequate record of the challenged proceedings, his claim on appeal must be resolved against him. [Citations.]" (*Rancho Santa Fe Assn. v. Dolan-King* (2004) 115 Cal.App.4th 28, 46; see also *Stasz v. Eisenberg* (2010) 190 Cal.App.4th 1032, 1039 ["It is Stasz's obligation as appellant to present a complete record for appellate review, and in the absence of a [complete record], we presume the judgment is correct"].)

The second reason for the forfeiture is that, "[i]n making his argument concerning the sufficiency of the evidence . . . , [appellant] restricts his analysis to the evidence most favorable to himself. Such an approach is a nonstarter and, indeed, forfeits consideration of the issue. [Citation.]" (*People v. Battle* (2011) 198 Cal.App.4th 50, 62; see also *Steele v. Youthful Offender Parole Bd.* (2008) 162 Cal.App.4th 1241, 1251 ["An appellant challenging the sufficiency of the evidence must set forth all the relevant evidence, not just the evidence favorable to the appellant, and show how the evidence does not support the judgment; otherwise, the contention is forfeited"].)

Claim that the San Bernardino Court Erroneously Presumed that Appellant Was Competent

"[T]he presumption of competency applies in a wardship proceeding[.] [Therefore,] the party asserting incompetency bears the burden of proving the minor is incompetent to proceed." (*In re R.V.*, *supra*, 61 Cal.4th at p. 197.) Appellant contends that the San Bernardino court should not have applied the presumption of

competency to him because in August 2015 he had been found incompetent in a prior separate juvenile wardship proceeding in Pomona. "The 2015 Pomona court ruling . . . should create a presumption of incompetence in subsequent proceedings. . . . [J]uveniles previously found incompetent should be presumed incompetent and the burden of proof should shift to the prosecution."

Section 709 governs the determination of a minor's competency in a wardship proceeding. In *In re R.V.*, *supra*, 61 Cal.4th at p. 193, our Supreme Court interpreted section 709 as "includ[ing] an implied presumption of competency" based on the provision's "statutory text" as well as its "legislative history and statutory purpose." The court "conclude[d] that the Legislature did not intend the enactment of section 709 to alter the existing practice of presuming a minor competent to undergo a wardship proceeding and imposing on the party claiming otherwise the burden of proving incompetency by a preponderance of the evidence." (*Id.* at p. 196.)

Appellant has not carried his burden of showing that the legislature intended "to alter the existing practice of presuming a minor competent" when the minor has previously been found incompetent in a prior separate juvenile wardship proceeding in a different county. (*In re R.V.*, *supra*, 61 Cal.4th at p. 196; see *Hsu v. Abbara* (1995) 9 Cal.4th 863, 871 ["In construing a statute, a court's objective is to ascertain and effectuate legislative intent"]; *In re S.C.* (2006) 138 Cal.App.4th 396, 408 ["The juvenile court's judgment is presumed to be correct, and it is appellant's burden to affirmatively show error"].)

Even if the San Bernardino court should have presumed that appellant was incompetent, the error would have been

reversible only if it had resulted in a miscarriage of justice. (*People v. Doolin* (2009) 45 Cal.4th 390, 420-421.) "'[A] "miscarriage of justice" should be declared only when the court, "after an examination of the entire cause, including the evidence," is of the "opinion" that it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error.' [Citations.]" (*People v. Richardson* (2008) 43 Cal.4th 959, 1001.) The "defendant . . . has the burden to show a miscarriage of justice. [Citation.]" (*People v. Ervine* (2009) 47 Cal.4th 745, 771.) Because the record does not include the evaluations prepared by Drs. Cheng and Graham-Howard, appellant cannot carry his burden of showing a miscarriage of justice.

Claim that the Los Angeles Court Erroneously Refused to Conduct a Competency Hearing

Appellant argues that, despite the San Bernardino court's prior finding of competency, the Los Angeles court should have conducted its own competency hearing. In adult criminal proceedings, """[w]hen a competency hearing has already been held and defendant has been found competent to stand trial . . . a trial court need not suspend proceedings to conduct a second competency hearing unless it "is presented with a substantial change of circumstances or with new evidence" casting a serious doubt on the validity of that finding."" [Citation.] [¶] We apply a deferential standard of review to a trial court's ruling concerning whether another competency hearing must be held. [Citation.] We review such a determination for substantial evidence in support of it." (*People v. Huggins* (2006) 38 Cal.4th 175, 220 (*Huggins*).)

The same legal principles apply in juvenile wardship proceedings. (§ 709.) Thus, in the instant case "a second competency hearing was required only on a showing of a substantial change of circumstances or new evidence casting a serious doubt on the validity of the prior finding [of competency] [citation]." (*Huggins*, *supra*, 38 Cal.4th at p. 220.)

In his opening brief appellant sets forth evidence allegedly establishing that he was incompetent. But he fails to show that this evidence constituted "a substantial change of circumstances" or "new evidence" that was not before the San Bernardino court. (*Huggins*, *supra*, 38 Cal.4th at p. 220.) Appellant asserts that "Dr. Freeman's report was 'new evidence' because [appellant's] San Bernardino counsel did not introduce it as evidence during the San Bernardino proceedings." But the San Bernardino court read Dr. Graham-Howard's report, which referred to Dr. Freeman's report. The court said that it would consider Dr. Freeman's report "to the extent that [it was] reviewed and relied upon by Dr. Graham-Howard." Appellant's counsel replied, "That's fine, your Honor."

Moreover, appellant does not show that the allegedly "new" evidence "cast[] a serious doubt on the validity of the [San Bernardino court's] prior finding [of competency]." (*Huggins*, *supra*, 38 Cal.4th at p. 220.) The record is inadequate to make such a showing because the San Bernardino court's finding of competency was based on the evaluations of Drs. Cheng and Graham-Howard, which are not part of the record on appeal. "Because [appellant] failed to furnish an adequate record of the [San Bernardino court] proceedings, [appellant's] claim must be resolved against [him]." (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295-1296.) "We see no basis on the present record to conclude

[the Los Angeles County Juvenile Court] erred in failing to conduct a second competency hearing. [Citation.]" (*People v. Lawley* (2002) 27 Cal.4th 102, 139.)

Disposition

The judgment (disposition order) is affirmed.

NOT TO BE PUBLISHED.

YEGAN, J.

We concur:

GILBERT, P. J.

TANGEMAN, J.

Phyllis Shibata, Commissioner

Superior Court County of Los Angeles

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